

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kyl L. Smith
Title: COMPOSITIONS FOR IMPROVING MENTAL PERFORMANCE
Appl. No.: 10/519,515
Filing Date: December 7, 2004
Examiner: Michele C. Flood
Art Unit: 1655
Confirmation 2543
Number:

**PETITION FOR REVIVAL OF APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The above-identified application became unintentionally abandoned for failure to file a timely and proper response to the Office Action incorrectly mailed by the U.S. Patent and Trademark Office on October 3, 2007.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

In support of this Petition, Applicant hereby provides:

- (1) Required reply and/or fee.

The proposed reply and required fee for the above-noted Office Action in the form of a Response to Noncompliant Amendment/Response to Restriction Requirement pursuant to 37 C.F.R. § 1.53(d) is enclosed herewith.

- (2) Petition Fee (37 C.F.R. § 1.17(m)).

Fees in the amount of \$770.00 set forth in 37 C.F.R. § 1.17(m) to cover the fee for this petition are being paid by credit card via EFS-Web.

Applicant hereby petitions for return of this Petition Fee on the basis the abandonment was due to several mail processing errors by the U.S. Patent and Trademark Office. Should this petition be approved, the Commissioner is hereby authorized to return the Petition Fee to the deposit account provided below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

(3) Statement that the abandonment was unintentional.

Applicant hereby states that the entire delay in filing the required reply, from the due date for the reply until the filing of this petition, was unintentional.

Applicant further asserts that the unintentional abandonment was due to U.S. Patent and Trademark Office error. In support of this, Applicant asserts that:

i. On July 24, 2007, Foley & Lardner LLP filed a Revocation and Power of Attorney, along with a Response to Restriction Requirement;

ii. On October 3, 2007, the PTO mailed a Notice of Incomplete Response to Applicant's prior counsel Akin Gump Strauss Hauer & Feld LLP; which was not communicated to Applicant's present counsel Foley & Lardner LLP or to the Applicant;

iii. On March 20, 2008, the PTO mailed a Notice of Abandonment to the firm Panitch Schwartze Belisario & Nadel LLP. This firm was never counsel of record and does not represent the Applicant in any patent cases.

iv. On or about May 7, 2008, Applicant phoned the PTO and obtained a status update on this case discovering it had been abandoned. Applicant directed its current patent counsel Foley & Lardner LLP to prepare this Petition and revive the application.

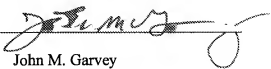
(4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

No terminal disclaimer is required in this application under 37 C.F.R. § 1.137(c) since this application was not filed before June 8, 1995.

Respectfully submitted,

Date May 21, 2008

FOLEY & LARDNER LLP
Customer Number: 48329
Telephone: (617) 342-4085
Facsimile: (617) 342-4001

By 

John M. Garvey
Attorney for Applicant
Registration No. 37,833